



Republican Party of Virginia

www.rpv.org

May 29, 2019

Dale Taylor, Chair
Hanover County Republican Committee

VIA E-mail

Re: Removal Petition Notice and Signature Requirements

Dear Chairwoman Taylor,

On May 23, you requested a ruling or interpretation regarding the Party Plan's provisions relating to removal of chairmen particularly those regarding notice and the requirement for signatures.

Relevant Provision of the Party Plan

The removal provision of the Plan reads in relevant part: "Any Chairman ... may be removed from office by the vote of two-thirds (2/3) of the other members of the Committee, after being furnished with notice that such removal will be sought, with the charges, in writing, signed by not less than one-third (1/3) of the members of the Committee; and allowing him thirty (30) days within which to appear and defend himself." Art. VII, Sec. C.

You inquire specifically about what constitutes furnishing a signed, written notice triggering the 30-day timeframe. The Plan provides no definitions of any of these terms and I have been unable to identify any prior rulings or interpretations addressing the particular issues you raise, save one regarding the issue of signatures, which I cite below.

While the term "furnished" appears no where else in the Plan, the other terms do appear and I look first to the context of these other uses to determine their meaning in this provision, first regarding notice and then regarding signatures. My analysis on signatures looks also to the law and a prior ruling by one of my predecessors.

Notice

Terms relating to written notice appear in only two other contexts—notice of meetings¹ and notice of change of location for a nominating contest.² The Plan specifically authorizes the use of e-mail as written notice in the first of these contexts, meeting notices: “Electronic mail shall be deemed written notice for the purpose of this subsection, unless otherwise specified in the bylaws.” Art. VII, Sec. B, para. (subsection) 1. Implicit in the second context is a requirement to physically post the notice on a building.

The term “notice” alone appears in three other contexts—Appeals Committee meetings (Art. X, Sec. A, para. 2), notifying the Party of General Counsel rulings (Art X, Sec. A, para. 4), and amending the Party Plan (Art. XI). The provision for Appeals Committee meetings does not make reference to how notice can be made. While the Appeals Committee is not an “official committee,” it seems reasonable to apply the e-mail notice rule that applies here as well. The notification of state central committee members and unit chairs regarding general counsel ruling specifically directs that it be made by e-mail. Notice of proposed amendments to the Party Plan by a State Convention specifically requires that the notice be postmarked, so it appears that notice by mail is required; amendments made by the State Central Committee need only appear in a meeting notice governed by the official committee notice rules.

The terms “writing” or “written” without specific reference to a notice appear in five other contexts—statements relating to nominating contests,³ financial obligations made by the Party,⁴ proxies (Art. VII, Sec. A, para. 3), disclosure of conflicts of interest (Art. VII, Sec. J., para. 2), and contests and appeals (Art. X, Sec. B, para. 4, 5). The Plan provides no particular instruction as to what constitutes a “writing” in any of these contexts. Customarily, statements relating to nominating contests are taken on paper forms. Financial obligations evidenced by a writing could be on paper or electronic. Proxies are customarily signed on paper, but often delivered by scan and e-mail. Conflicts disclosure have been made on paper and by e-mail. Contests and appeals follow the same pattern as proxies.

Given the variety of ways in which “written notice,” “notice,” “writing,” and “written” are used either by explicit direction of the Plan or by custom, I am of the opinion that an e-mail message can provide “written notice” for purposes of the removal provision of Article VII,

¹ Meeting notices are generally governed by Art. VII, Sec. B. The duty of various official committee chairs to issues such notices are defined at Art. III, Sec. D, para. 2; Art. IV, Sec. D, para. 2; Art. V, Sec. D, para. 2; Art. VI, Sec. D, para. 2. Various actions that can only be taken when included in a meeting notice appear at Art. VI, Sec. F (dissolving combined units); Art. VII, Sec. E (nominations by committees); Art. VII, Sec. F (filling vacancies in nominations); and parallel provisions for filling vacancies on various official committees (Art. III, Sec. C, para. 5; Art. IV, Sec. C, para. 3; Art. VI, Sec. C, para. 4).

² The requirement to post a written notice of a change in location for a mass meeting, party canvass, or convention at the original location appears at Art. VIII, Sec. M.

³ Statements of intent to support Republican nominees (Art. I, Sec. A, para. 1) and statements of renunciation of another party after participating in their nominating contests (Art. I, Sec. A, para. 5).

⁴ Obligating the Party to finance expenditures of statewide campaigns (Art. III, Sec. D, para. 1(d)) and restrictions on contracts (Art. III, Sec. F).

Section C. However, given that notice in this context is directed to a single individual (the subject of the removal provision) rather than more generally to, for example, many members of an official committee or participants in a nominating contest, and that the notice triggers a specific timeframe, due process requires that any notice be reasonably calculated to give actual notice to the recipient and that some evidence support that notice was given. For example, an affidavit from a person who personally delivered notice, a certified mail receipt, or confirmation from a private delivery service, would all be sufficient. Any similar evidence from an e-mail delivery would be sufficient.

Signatures

Having set out what constitutes written notice for purposes of this provision, I now turn to the meaning of “signed.” The term “signed” is used in the Plan in five other contexts— regarding renunciation statements (Art. I, Sec. B, para. 5); commissions issued by the State Chair to Unit Chairs (Art. III, Sec. D, para. 2(f)); proxies (Art. VII, Sec. A, para. 3); declarations of military members relating to the military delegation at a convention (Art. VIII, Sec. H, para. 7(a)); and petitions supporting contests and appeals (Art. X, Sec. B, para. 4). None of these provisions gives any additional instruction as to what constitutes a signature.

State law defines signature in different ways in different contexts. E-signatures are acceptable in many contexts. The federal ESIGN Act and the Uniform Electronic Transactions Act (UETA), which has been adopted by Virginia regulate e-signatures and their use. The ESIGN Act defines an e-signature as “an electronic sound, symbol, process attached to or logically associated with a contract or other record executed or adopted by a person with the intent to sign the record and be legally bound.”

In order to be “signed,” a written notice under Article VII, Section C, must meet this test. I am aware of several ways in which official committees have accepted signatures:

- One or more pages of physical signatures appended to a notice document, transmitted either as a physical document or an image of a physical document transmitted by e-mail.
- Through the use of DocuSign, a commercial e-signature application, to collect e-signatures, which were then printed out and appended to a physical document and transmitted by private delivery.

Official committees acted on removal petitions signed in these ways.⁵ Other methods consistent with the ESIGN Act or traditional physical documents may also be acceptable.

However, in all cases, the signatures must be included as part of the written notice of charges provided to the subject of the removal petition so that the recipient had evidence of a valid removal petition meeting the signature requirement; a mere list of names is insufficient. My predecessor, Lee Goodman, noted that the charging document itself must include the signatures

⁵ The most analogous provision of the Party Plan, petitions accompanying contests and appeals under Art. X, have been presented and acted upon in similar fashion.

Dale Taylor
March 29, 2019
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in a ruling issued on February 2, 2011, a copy of which is attached. I would also note that the ruling provides a very helpful analysis of removal proceedings and the requirements that apply.

This letter constitutes a ruling or interpretation of the Party Plan. Pursuant to Article X, it may be appealed to the Appeals Committee or directly to the State Central Committee within thirty days of the date it is posted on the RPV website.

Sincerely,



Chris Marston,
General Counsel

Attachment: Lee E. Goodman, "General Counsel Opinion Request—Removal Procedures" to Wayne Hayden, Feb. 2, 2011.